



Special administrations: what members and directors should know

This fact sheet provides general information for members and directors of corporations. It is about special administrations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

What is a special administration?

A special administration is a process where the Registrar appoints an independent and suitably qualified person to look after and fix problems at a corporation. The problems might be short-term financial troubles, poor internal business or governance practices (the corporation is not running as it should), or the structure of the corporation needs to be changed. The aim is to return control of a better corporation to its members.

Special administration is a special measure under the CATSI Act. It is different to an administration under the *Corporations Act 2001* (Corporations Act). Only Aboriginal and Torres Strait Islander corporations can be placed under special administration.

How does a special administration start?

Only the Registrar can place a corporation under special administration. The Registrar looks at many issues when making a decision to place a corporation under special administration.

The Registrar does not need to apply to a court, but must usually give a corporation a chance to say why it thinks a special administrator should not be appointed (this is called a 'show cause procedure').

To protect public money or to ensure that essential or significant services are not interrupted, the Registrar can place a corporation under special administration without the show cause procedure.

The directors or members of a corporation can write to the Registrar to ask for their corporation to be placed under special administration.¹

The Registrar can appoint one or more people to act as special administrator.

1. A majority of directors or the required number of members is needed. The number of members required depends on the size of the corporation. See ORIC's policy statement PS-20 *Special administrations*.

Can a corporation disagree with the decision?

A decision to place a corporation under special administration or extend an administration is a reviewable decision. The CATSI Act says the first step is to ask the Registrar to reconsider the decision. A member or a director has 28 days after they have notice of the decision to ask the Registrar for a review. If after the review the member or director still disagrees with the Registrar's decision they can ask the Administrative Appeals Tribunal to review it.

What changes when a special administration starts?

A special administrator takes the place of the directors. The directors and secretaries of the corporation no longer hold office (unless the Registrar decides otherwise) and cannot use their powers. They also cannot use or deal with the corporation's property without the permission of the special administrator.

What the special administrator does

A special administrator takes full control of the corporation, its business and property.

The special administrator will:

- collect and manage the assets (for example, bank accounts, vehicles and office premises)
- work out the problems (the reasons for the special administration)
- improve internal business and governance practices, if necessary (for example, introduce rules about how money is spent)
- make sure everything works as it should to meet the needs of the corporation, its directors and members
- look at the rule book and make changes if needed
- check the register of members and update it when it is not correct or out of date
- send regular reports to the Registrar about what's happening at the corporation.

Who's who?



A **member** is a person whose name and address is written in the corporation's register of members. A special administrator will check the register of members and update it when the information is not correct or out of date.



The **directors** are the people who are appointed by the members to govern the corporation. They make decisions for the corporation and are accountable for it. They have duties under the CATSI Act. Usually the directors do not manage the day-to-day operations of the corporation—that is the role of the CEO.



Small and medium corporations have a **contact person** and large corporations have a **secretary**. These people act as a mail box for a corporation, passing on mail and other messages to the directors. Secretaries are also responsible for making sure the corporation lodges its reports each year. Secretaries must also let the Registrar know about changes at the corporation such as to the directors, the contact details for the corporation or its directors and to its rule book.

To do these things the special administrator works with people associated with the corporation—the members, creditors, former directors and other interested parties, such as funding bodies. But the special administrator is an independent officer and is not subject to direction from any of these people. Members and the former directors have no formal role in the special administration process.

Special administrators can set up an advisory group which may include some of the corporation's members or former directors. They will talk with this group about the steps forward and rule book issues such as who can become members.

The Registrar expects that the special administrator will also hold community meetings and send out regular newsletters. This is to keep members and other interested people up to date with the progress of the special administration and plans for the future.

If members have questions or ideas to make the corporation stronger they can contact the special administrator, the advisory group (if there is one) or ORIC.

New members during the special administration

A person can still apply for membership of a corporation when it is under special administration. The special administrator will decide whether the person meets the requirements for membership. These requirements are in the corporation's rule book.

The register of members is kept at the corporation's document access address or registered office. You can contact the special administrator if you want to look at it.

Who pays the special administrator?

The Registrar sets the special administrator's costs, including their fees, charges and expenses. The Registrar may pay the costs or decide that the corporation or a related organisation is to pay some or all of the costs.



You can look at newsletters sent out by special administrators in the public register on ORIC's website at www.oric.gov.au.

Use the 'Search for a corporation' function. Look in the corporation's documents.

Complaints or concerns about a special administrator?

If a member or former director is not satisfied with what a special administrator has done or is doing they can contact ORIC to make a complaint or ask about what they can do. For information about making a complaint see ORIC's policy statement PS-03 *Complaints about the Registrar's staff and contractors*.

How does a special administration end?

When a corporation is ready to be handed back to its members, new directors will be chosen by the members. The new directors will start their duties when the special administration ends.

If it isn't possible to fix the corporation's problems an application can be made to the court to place the corporation into liquidation. The application can be made by the special administrator, the Registrar or, at the end of the special administration, by a director, creditor or member.

At the end of a special administration a corporation can also move to an administration under the Corporations Act. But this doesn't happen very often. Contact ORIC for more information on these other processes.

The Registrar expects that when a special administration is straightforward it should not take more than six months and when it is complex not more than 12 months. The Registrar can extend or end a special administration.

To find out more

For more information about special administrations see ORIC's policy statement: PS-20 *Special administrations*. Get a copy from www.oric.gov.au, call 1800 622 431 (free call except for mobiles) or email info@oric.gov.au.

Further information

freecall: 1800 622 431
(free except for mobiles)

email: info@oric.gov.au

website: www.oric.gov.au

Note: This fact sheet contains basic information only and should not be taken as a substitute for legal advice. Please see your lawyer to take into account your particular circumstances.